



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PHOENIX CITY PROSECUTOR'S OFFICE v. THE HONORABLE
GLORIA YBARRA (real party in interest, Joshua L. Landers),
No. CV-07-0265-PR**

PARTIES AND COUNSEL:

Petitioner: Phoenix City Prosecutor's Office, by Assistant City Prosecutor Gary L. Shupe.

Respondent: Real Party in Interest Joshua Price Landers, by Jonathan L. Warshaw.

FACTS:

Joshua Price Landers, charged with two misdemeanor DUI offenses in city court, requested a jury trial pursuant to A.R.S. § 28-1381(F). The trial court granted his request. The jury acquitted Landers of driving while impaired, but found him guilty of having BAC of .08% or more within two hours of driving.

He moved for, and the trial court (the Honorable Gloria Ybarra) granted, a new trial on the BAC charge. Before his new trial, Landers filed a "Waiver of his Right to Jury Trial." The State opposed the waiver. In addition, the State asked the court to grant its independent request for a jury trial.

The trial court rejected the State's opposition to Landers' waiver of jury trial and denied the State's independent request for a jury, reasoning that A.R.S. § 28-1381(F) only provides a *defendant* with a right to a jury trial if requested, and nothing in the statute requires the consent or approval of the State for an effective waiver by a DUI defendant. The State, having no right to appeal from the orders, filed a petition for special action. The superior court declined jurisdiction of the State's petition for special action.

The appellate court accepted special action jurisdiction to address a legal question of statewide importance for which the State has no plain, speedy, or adequate remedy by appeal. Additionally, it saw a need to provide guidance, as the municipal courts have made conflicting rulings on the issue.

First, the court by a majority considered and rejected the argument that the State has, and timely exercised, an independent right to jury trial under § 28-1381(F). Looking to the plain, unambiguous language of the statute, the majority of the court decided that the legislature clearly stated that if no request for jury trial is made by a *defendant* the case will not be tried before a jury. In this manner, it said, the legislature implicitly excluded the State from exercising a correlating statutory jury trial right. The majority found this conclusion consistent with its previous decisions.¹

¹ *State ex rel. Wangberg v. Hon. Smith (Levinson, rpi)*, 211 Ariz. 101, 118 P.3d 49 (2005) (Division One found statute plainly provided right to jury trial for DUI misdemeanors if requested); *Manic v. Hon. Dawes*, 213 Ariz. 252, 141 P.3d 732 (App. 2006) (§ 28-1381 (F) created substantive right to jury trial and is not merely procedural in nature as providing notice of existing rights).

It declined to utilize secondary principles of construction to discern legislative intent because of the plain statutory language, and it said the reasons for allowing the State to obtain a jury trial in the face of a defendant's waiver of a *constitutional right* to a jury² do not apply to a waiver of a *statutory right*.

Second, the majority considered and rejected the argument that the State is required to consent to a defendant's waiver of jury trial under A.R.S. § 13-3983 (2001) and criminal Rule 18.1(b), and that it was prevented from doing so here. The majority found these provisions were inconsistent with the plain language of § 28-1381(F) because applying them to misdemeanor DUIs would effectively grant the State the independent jury trial right that the legislature had denied. It said that the only way to harmonize the statutes and rule is to conclude that the State's consent to a defendant's waiver of a jury trial right is only required when the right also is substantively granted to the State. The comment to Rule 18.1 refers to a "defendant's" constitutional right to jury trial, further supporting the decision to distinguish between constitutional and statutory rights. The majority found no reason to set up a situation where, the legislature having declined to give the State a right to jury trial under the statute, the court then should give it the right to veto a defendant's decision to withdraw a jury request if one is made.

Judge Hall dissented from the majority's statutory interpretation and legal analysis. He found nothing in the statutes, or in the majority's attempt to interpret *Singer* (see footnote 2 below), to convince "that the legislature intended to bestow upon misdemeanor DUI defendants alone an unconditional right to waive a jury trial when that same right is conditioned in all other cases on the prosecutor's agreement."

Judge Hall reasoned that, having given a DUI defendant the right to be tried by a jury in a misdemeanor case, the right is coextensive for the State and may not be waived without the State's consent. He would find the plain language of the statute no more compelling than the plain language of the Sixth Amendment (the "accused shall enjoy the right to a speedy and public trial") as support for finding only a defendant's right was granted – an argument rejected in *Singer*. He also disagreed the State has a lesser interest in securing a tribunal that it believes is most likely to produce a fair result when a jury trial right is statutory, rather than constitutionally-based.

Judge Hall found neither reason stated by the majority for distinguishing *Singer* is persuasive. He emphasizes that the legislature itself considered the consequences of convictions for misdemeanor DUI offenses to be serious enough to justify a right to a jury trial, and refers to *Manic*. This conclusion seems to be within the contemplation of *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005), and Ariz. Const. Art. 2, § 24. It also is supported by *Stoudemire v. Simon*, 213 Ariz. 296, ¶ 9, 141 P.3d 776 (2006) (review denied April 17, 2007) (court considered that drug offenses could be charged as class one misdemeanors and that the legislature had provided the

² In *Singer v. United States*, 380 U.S. 24, 36 (1965), the Supreme Court rejected the defendant's argument that his unconditional constitutional right to a jury trial also included a right to have his case decided by a judge alone, if he deems it advantageous. It held that a defendant has no constitutional right to waive a jury trial, and that Federal Rule 23(a) set forth a reasonable procedure governing attempted waivers. It reasoned that the government is entitled to withhold consent to a waiver because the government "has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result."

opportunity for mandatory probation upon conviction to support presumption under *Derendal* that offenses were not “serious”).

He said the right to a jury trial is not an unconditional right to be tried without a jury, and Rule 18.1(b) is clear. The result of applying the rule and § 13-3983 is no more anomalous than the determination in *Singer* that the Sixth Amendment does not provide a defendant the unfettered right to waive a jury trial. Plus, the anomaly referred to by the majority is of its own making by finding the legislature intended not to provide coextensive rights. As the right to jury trial is not the right to be tried without a jury under *Singer*, and the plain language of Rule 18.1(b) makes no distinction of the source of the right to be regulated, he would apply the rule to require consent of the prosecutor to a waiver in cases like this.

ISSUE:

“The plain, unambiguous language of both Rule 18.1(b) and Section 13-3983 conditions a criminal defendant’s attempted jury trial waiver on the State’s consent. Despite this plain language, the court of appeals exempted misdemeanor DUI defendants from obtaining the State’s consent, elevating the jury trial rights of these defendants above all other defendants. Was this anomalous result error?”

Definitions:

A.R.S. § 28-1381(F) provides: “At the arraignment the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.”

A.R.S. § 13-3983 provides: “A trial by jury may be waived in criminal actions by the consent of both parties expressed in open court and entered on its minutes.”

Arizona Rules of Criminal Procedure, Rule 18.1 provides: “The defendant may waive [the] right to trial by jury with consent of the prosecution and the court.” Comment to criminal Rule 18.1(b), titled *Waiver*, states: “Rule 18.1(b) states the conditions on defendant’s waiver of jury contained in Ariz. Const. Art. 6, § 17 (Supp. 1971), consent of the court and the prosecutor.”

Arizona Constitution, Article 6, § 17 provides in relevant part: “The right of jury trial as provided by this Constitution shall remain inviolate, but trial by jury may be waived by the parties in any civil cause or by the parties with the consent of the court in any criminal cause.”

Article 2, § 4 provides: “No person shall be deprived of life, liberty, or property without due process of law.”

<p><i>This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.</i></p>
